

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
(MACON DIVISION)**

**CERTUSBANK, N.A., as successor by
assignment to ATLANTIC SOUTHERN
BANK,**

Plaintiff,

v.

DANIEL R. MILLER,

Defendant.

CIVIL ACTION NO. 5:14-CV-63-MTT

COMPLAINT

Plaintiff CertusBank, N.A. ("CertusBank" or "Plaintiff"), as successor by assignment to Atlantic Southern Bank ("Atlantic Southern"), hereby files this *Complaint* (the "Complaint") for damages against Defendant Daniel R. Miller ("Miller" or "Defendant"), showing the Court as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff CertusBank is a national banking association, with its principal place of business located in South Carolina.
2. Defendant Daniel R. Miller is a citizen and resident of the State of Georgia.
3. Miller may be served at 1211 Gray Highway, Macon, Georgia 31211, or such other address where he may be found.
4. This Court has jurisdiction pursuant to 28 U.S.C. § 1332, in that there is complete diversity of citizenship among the parties and the amount in controversy exceeds \$75,000.00.
5. The acts and transactions that give rise to the asserted claims in this Complaint

occurred, in substantial part, in this district.

6. Venue is appropriate in the United States District Court for the Middle District of Georgia pursuant to 28 U.S.C. § 1391 (b), and LR 3, M.D. Ga.

FACTS

7. DVM Properties, LLC (the “Borrower” or “DVM”), through its member and president, Miller, executed and delivered to Atlantic Southern that certain *Promissory Note* in the original principal amount of \$1,057,529.23 and dated as of April 25, 2010 (as amended, restated, and/or modified from time to time, “Note 1”).

8. A true and correct copy of Note 1 is attached hereto as Exhibit A and incorporated herein by this reference.

9. Miller executed and delivered to Atlantic Southern that certain *Guaranty* dated as of April 25, 2010 (“Guaranty 1”).

10. A true and correct copy of Guaranty 1 is attached hereto as Exhibit B.

11. Pursuant to Guaranty 1, Miller absolutely and unconditionally guaranteed payment and performance of, *inter alia*, DVM’s debt to Atlantic Southern under Note 1 and any and all documents, instruments, and agreements executed in connection therewith (collectively, the “Note 1 Loan Documents”).

12. DVM, through its member and president, Miller, executed and delivered to Atlantic Southern that certain *Promissory Note* in the original principal amount of \$100,000.00 and dated as of April 25, 2010 (as amended, restated, and/or modified from time to time, “Note 2”, and together with Note 1, collectively, the “Notes”).

13. A true and correct copy of Note 2 is attached hereto as Exhibit C and incorporated herein by this reference.

14. Miller executed and delivered to Atlantic Southern that certain *Guaranty* dated as of April 25, 2010 (“Guaranty 2”, and together with Guaranty 1, collectively, the “Guaranties”).

15. A true and correct copy of Guaranty 2 is attached hereto as Exhibit D.

16. Pursuant to Guaranty 2, Miller absolutely and unconditionally guaranteed payment and performance of, *inter alia*, DVM’s debt to Atlantic Southern under Note 2 and any and all documents, instruments, and agreements executed in connection therewith (collectively, the “Note 2 Loan Documents”)(hereinafter, the Note 1 Loan Documents and Note 2 Loan Documents shall be collectively referred to herein as the “Loan Documents”).

17. CertusBank is the current holder of the Loan Documents by virtue of purchase and assignment from the Federal Deposit Insurance Corporation as Receiver for Atlantic Southern.

18. The Notes matured on May 5, 2011 (the “Maturity Date”).

19. DVM defaulted under the Notes by failing to make payments as and when due thereunder.

20. DVM defaulted under the Notes by failing to pay the amounts outstanding under the Notes upon the Maturity Date.

21. On or about April 11, 2012, Plaintiff, by and through its counsel, sent notice of non-payment and demand for payment under the Loan Documents to, *inter alia*, DVM and Miller, via Certified Mail and regular First Class Mail (the “Demand Letter”).

22. A true and correct copy of the Demand Letter is attached hereto as Exhibit E and is incorporated herein by this reference.

23. In the Demand Letter, and pursuant to O.C.G.A. § 13-1-11, Plaintiff provided notice to Miller and the other recipients of the Demand Letter that the provisions of the Notes

and related Loan Documents providing for payment of attorneys' fees would be enforced if the amounts due and owing under the Notes were not paid within ten (10) days of receipt thereof.

24. As February 14, 2014, the aggregate principal, accrued but unpaid interest, and accrued fees and charges outstanding under the Notes are as follows:

Principal:	\$ 486,288.53
Accrued Interest as of February 14, 2014:	\$ 55,217.79
TOTAL:	<hr/> \$ 541,506.32

Interest will continue to accrue at the per diem rate of \$84.56.

25. The aforementioned outstanding principal, accrued but unpaid interest, and late charges outstanding under the Notes as of February 14, 2014 are exclusive of costs of collection and attorneys' fees available under the Loan Documents and applicable law.

26. Additional interest, fees, costs and charges shall continue to accrue under the Loan Documents from February 14, 2014 going forward.

Count I

BREACH OF THE GUARANTIES

27. The foregoing paragraphs of this Complaint are re-alleged and incorporated by reference as if fully set forth herein.

28. Miller breached the Guaranties by failing to pay all amounts due under the Notes upon DVM's defaults thereunder and upon the maturity of the Notes.

29. Pursuant to the Guaranties, Miller is liable to CertusBank for the indebtedness due and owing under the Notes.

30. CertusBank was damaged as a result of the breaches of contract described above.

31. CertusBank is entitled to recover from Miller all amounts due, owing, and accruing under the Notes and applicable law, including but not limited to the total amount of \$541,506.32 in principal, interest and other charges due under the Notes as of February 14, 2014, plus such further interest, expenses, costs, and attorneys' fees as the same have accrued and continue to accrue.

Count II

UNJUST ENRICHMENT

32. The foregoing paragraphs of this Complaint are re-alleged and incorporated by reference as if fully set forth herein.

33. Atlantic Southern provided DVM a valuable service by advancing money to DVM under the Notes.

34. Miller requested and knowingly accepted the benefits accruing under the Notes.

35. Receipt by Miller of the aforementioned benefits would be unjust without compensating CertusBank.

36. Miller has been unjustly enriched in the amount of the outstanding unpaid principal and interest under the Notes, plus expenses, costs, and attorneys' fees.

37. Miller, in fairness and good conscience, should remit to CertusBank the extent of the value conferred under the Note, which includes all amounts due, owing, and accruing under the Notes and applicable law, including but not limited to the total amount of \$541,506.32 in principal, interest and other charges due under the Notes as of February 14, 2014, plus such further interest, expenses, costs, and attorneys' fees as the same have accrued and continue to accrue.

Count III

ATTORNEYS' FEES AND LITIGATION COSTS

38. The foregoing paragraphs of this Complaint are re-alleged and incorporated by reference as if fully set forth herein.

39. Section 11 of each of the Guaranties provides, among other things, for payment of "reasonable attorneys' fees, court costs, and other legal expenses," on or after default.

40. Pursuant to O.C.G.A. § 13-1-11, CertusBank made demand upon Miller for all amounts owing under the Notes, and advised that failure to pay the same will cause the provisions of the Loan Documents providing for attorneys' fees to be enforced.

41. As of the date of this Complaint, Miller has failed to pay CertusBank the amounts outstanding under the Notes and Guaranties.

42. Pursuant to O.C.G.A. § 13-1-11, CertusBank hereby again makes demand to Miller for payment of all amounts due and owing under the Guaranties, and hereby provides notice that if such amounts are not paid within ten (10) days from the date of service of this Complaint upon Miller, the provisions relating to payment of attorneys' fees in the Guaranties in addition to all other amounts due under the Guaranties shall be enforced.

43. CertusBank is entitled to recover from Miller its attorneys' fees and expenses in connection with enforcing its rights under the Loan Documents and Guaranties to the fullest extent permitted under the applicable Loan Documents, the Guaranties, O.C.G.A. § 13-1-11 and Georgia law.

WHEREFORE, CertusBank respectfully requests that the Court enter judgment in favor of CertusBank and against Miller, as follows:

(a) As to Count I: Judgment against Miller for breach of the Guaranties in the total amount of \$541,506.32 as of February 14, 2014, plus further interest, expenses, costs, and

attorneys' fees as the same have accrued and continue to accrue under the Notes and related Loan Documents;

(b) As to Count II: Reimbursement by Miller to CertusBank for unjust enrichment, to the extent of the value conferred, which includes all amounts due, owing, and accruing under the Loan Documents in the total amount of \$541,506.32 as of February 14, 2014, plus further interest, expenses, costs, and attorneys' fees as the same have accrued and continue to accrue under the Notes, the Guaranties, and related Loan Documents;

(c) As to Count III: An award of CertusBank's attorneys' fees and expenses in connection with enforcing its rights under the Loan Documents, to the fullest extent permitted under such Loan Documents, O.C.G.A. § 13-1-11, and Georgia law; and

(d) Any and all other relief the Court deems just, equitable and proper.

Dated: February 14, 2014.

Respectfully submitted,

/s/ Sean A. Gordon

Sean A. Gordon

Georgia Bar No. 777350

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